IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 572 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UGA VAGHA FAFAL (HARIJAN)

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 572 of 2004

MR KANUBHAI I PATEL for Petitioner.

MR HM PRACHCHHAK, LD. APP for Respondent.

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 17/08/2004

ORAL JUDGEMENT

Heard Mr. K.I. Patel, learned counsel appearing for the petitioner and Mr.H.M. Prachchhak, ld. APP, on behalf of the respondent.

2. Rule. The formal service of Rule is waived by

Mr.H.M. Prachchhak, ld. APP, on behalf of the respondent.

3. Today by consent, the present Revision Application is taken up for final hearing.

4(i) Mr.Patel and Mr.Prachchhak have taken me through both the orders referred to in the memo of the present Revision Application i.e. order passed below Exh.41, earlier application filed by the present petitioner to have a copy of one videotape seized during the investigation under panchnama and the order passed below Exh.92, praying substantially the same relief quoting different sections of the Criminal Procedure Code, 1973 (hereinafter referred to as 'the Code) i.e. Section 207 of the Code.

4(ii) It is on record that till date the videotape, submitted to the Court by the Investigating Officer as muddamal, is in the custody of the Court and it was not with the prosecution on the day on which the application Exh.41 was submitted. Though it has been stated by the Investigating Officer in his deposition that before drawing panchnama of the scene of the offence, a videographer was called for and videography was made of the alleged scene of incident. It is submitted by Mr. Patel that till date the prosecution has not examined the videographer, who has made videography and it appears from the record and both the orders at first sight that neither any of the witnesses has tendered the videotape in evidence nor the same has been exhibited as document in the proceedings.

4(iii) The grievance of the present petitioner before the trial Court on both the occasions was that the accused ought to have been afforded full opportunity to defend himself and keeping in mind the established principle of fair trial, an important document where decoding is required or special efforts/attempts are required to be made to see or read the document, the accused should be given a reasonable opportunity but on both the occasions the request of accused was not found acceptable by the trial Court.

4(iv) At present this Court is requested to reverse the findings recorded by the learned Additional Sessions Judge while disposing of the application Exh.92. But the learned Judge has rightly observed that grant of application would amount to review of the earlier order passed by its predecessor while dealing with the application Exh.41, wherein similar prayer was made. The

second ground for rejection is that the document/videotape has not been tendered in evidence till date of examination of the Investigating Officer. He has simply referred the fact that the videography of the place of the incident was made at night and prior to drawing of scene of panchnama. It is relevant to note that for this statement he has been cross-examined by the defence side. It is also the say of the learned Additional Sessions Judge that the videotape (the only master videotape) was never with the prosecution on any day after filing of the chargesheet and it is in the custody of the Court. The three decisions i.e. 1984 Cr.L.J. 86, in the case of C.J. Chaudhary v. State of Delhi; 1997 Cr.L.J. 1232, in the case of Sadhvi Ritumbhara v. State of M.P. and 1982 Cr.L.R. 229, in the case of Pravinchandra Lalchand Shah v. State of Gujarat, cited by Mr. Patel were also cited before the learned Additional Sessions Judge and it is submitted that the learned Additional Sessions Judge has not discussed the ratio laid down by the aforesaid three decisions and that has resulted into failure of justice.

5. Having considered the decisions cited by the learned counsel appearing for the petitioner, it appears that these decisions are dealing with totally different set of facts and aspects relating to videotape, its admissibility and production, etc. referred to in the aforesaid three decisions. Likelihood of miscarriage of justice is not there as prosecution has not placed reliance on the contents of the document i.e. videotape. No attempt to get the document exhibited without supply of copy has been made. This fact cannot be ignored. So I do not find any merits in the present Revision Application and the present Revision Application requires to be rejected mainly on the ground that there is no apparent error of law and in the background of one fact that the order passed below Exh.41 was never challenged by the present petitioner, which was on the similar law point.

6. The anxiety expressed by Mr.Patel is that the Investigating Officer has stated in his examination-in-chief that at his insistence and during the course of investigation, a videographer was called and videography was made. Merely because that videotape has been given to the Court as muddamal, the petitioner-accused should not be thrown to any apprehension or prejudice which is likely to cause serious prejudice to him. Production of videotape as one of the muddamal articles and its reference is one fact and it may only corroborate or contradict the statements

made by the Investigating Officer and Panchas and reference of this fact is not the proof of the contents of the document. Now if the petitioner-accused at a later stage of trial want to use the muddamal article or its any contents while entering into defence or to examine the videographer as his witness, then for that the petitioner-accused ought to have approached the trial Court that he may be given inspection, as normally in many cases the accused are praying for inspection of documents tendered in the Court by way of muddamal; and if he is of the view that a copy of that document may help him in confronting the case of the prosecution or for defending his case, he can pray for a copy of the same at his own costs. It is difficult for the Court to call the videotape in question, a document within the meaning of Section 207(5) of the Code.

7. So if the accused prays to the trial Court before he is asked to enter into defence that he should be given inspection of the document i.e. muddamal videotape, then proper opportunity should be given to him. The petitioner-accused can take assistance of any instrument, like video cassette player, in presence of any responsible officer, and if insisted, in the presence of learned Public Prosecutor appearing in the case, by filing an undertaking to the effect that there shall not be any damage to the said document i.e. videotape and this exercise should be done in the Court premises on a non-working day or during non-working hours. After watching the videotape, if the petitioner-accused desires to have a copy of the said videotape, a copy of the said videotape may be given to the petitioner-accused at his own costs. Therefore, if he so desires, he can develope or place his defence. The accused is entitled to put or develope his defence on the facts placed by prosecution. For this purpose, if a request to keep the expert present is made when the videotape is to be exhibited, such a request extended by the present petitioner and/or the prosecution can be considered. The costs of this exercise, obviously, shall have to be borne by the petitioner-accused. It is difficult for the Court to say that the prosecution is not playing fair game because the prosecution has never attempted to suppress the videotape as the same has been tendered before the Court well in time i.e.at the time of submission of the chargesheet. So in view of the earlier order passed below Exh.41 and the facts on record, it is difficult for the Court to say that the findings recorded by the learned Additional Sessions Judge are in any way erroneous.

8. With these observations, the present Revision

Application is hereby dismissed. Rule is discharged. Direct Service is permitted.

The point of statutory bar under Section 397(2) has been neither agitated nor argued, so no finding on this point is required to be recorded.

It will be open for the learned counsel appearing for the petitioner-accused to intimate the trial Court telephonically about the order passed by this Court today.

(C.K. Buch, J)

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